Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

NO. A-76 79-541

ROBERT F. ALLSTON, Petitioner

versus

AUGUSTUS T. GRAYDON, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

ROBERT F. ALLSTON, PRO SE.
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CASHIERS,
NORTH CAROLINA, 28717

SEPTEMBER, 1979

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The petitioner Robert F. Allston respectfully prays that a writ of certiorari issue to review the memorandum opinion of the Supreme Court of South Carolina entered in the proceeding May. 3, 1979 and review whether the South Carolina Supreme Court justices should have disqualified to adjudicate this cause.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979
NO. A-76

ROBERT F. ALLSTON, Petitioner
versus
AUGUSTUS T. GRAYDON, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

OPINION BELOW

The opinion of the South Carolina Supreme Court and the order of the South Carolina Circuit Court appear in the appendix hereto.

JURISDICTION

Memorandum opinion No. 79-90, appeal dismissed, of the South Carolina Supreme Court was entered May 3, 1979. An application for 60 days extension of time to file with this Court was filed July 23, 1979 and granted July 27, 1979 giving petitioner until September 30, 1979 in which to file this petition. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. Whether it is a denial of the due process provision of the Fourteenth Amendment to the United States Constitution for the justices of a state supreme court to adjudicate the cause of a litigant who is maintaining a different action against the same supreme court justices.

2. Whether the South Carolina Supreme Court denied to the petitioner his right to due process under the Fourteenth Amendment to the United States Constitution by not allowing petitioner to appeal the settlement of the record on appeal in this cause.

3. Whether it constituted a denial of the petitioner's rights to due process under the Fourteenth amendment to the United States Constitution such that petitioner's attached funds should be returned to him wherein the respondent herein, a member of the South Carolina Bar, refused to consider fair arbitration but pressured and conspired with petitioner's attorney to misuse the office of judge in order to attempt to gain alleged attorney fees.

CONSTITUTIONAL PROVISIONS INVOLVED

The due process provision of the fourteenth amendment to the United States Constitution.

STATEMENT OF THE CASE

Petitioner was represented by the respondent, Augustus T. Graydon, Esquire, regarding distribution of a South Carolina estate in 1971 and 1972 which gave rise to a dispute regarding attorney fees. An ex parte restraining order was issued dated December 1972, restraining the distribution of $9,000 from the said estate pending resolution of the fee dispute.

Petitioner filed an action, pro se, in the United States District Court for the District of South Carolina, Columbia Division, Robert Allston v. B. Allston Moore, et al., in 1975, against Augustus T. Graydon and two other prominent attorneys alleging fraud and conspiracy in handling the estate. Augustus T. Graydon subsequently filed a counterclaim for attorney fees and shortly thereafter filed (for the first time) a summons and complaint seeking attorney fees in the Circuit Court for Georgetown County, South Carolina. Petitioner timely replied to the counterclaim and answered the State Court complaint pro se as requested by Augustus T. Gaydon in 1977, shortly thereafter moving the South Carolina Circuit Court to release the funds. This was eventually appealed to the South Carolina Supreme Court; memorandum Opinion issuing May 3, 1979, upholding attachment, from which this petition is taken.

Regarding the District Court action, Robert Allston v. B. Allston Moore, et al., which centered about the integety of an estate settlement, the South Carolina District Court found for the defendants on summary judgment stating basically that any fraud that should have been perpetrated upon plaintiff (petitioner) was known to him at the time of entering into the settlement. The District Court was upheld on appeal to the Fourth Circuit of Appeals on April 13, 1979. The Counterclaim of Augustus T. Graydon for attorney fees has yet to be litigated. The action against the three attorneys was handled pro se by the plaintiff (petitioner) in the District Court and handled by Thomas F. Leflin, III Esquire, of Darham, North Carolina, on appeal.

By letter of November, 1977, petitioner requested the South Carolina Bar to place the following advertisement in its monthly publication — The Transcript:

REQUIREMENT FOR COUNSEL

> Private individual requires counsel to associate with North Carolina counsel for purpose of processing action against prominent South Carolina attorneys.
>
> The litigation concerns allegations of record of conspiracy, fraud, malpractice and attempted extortion.
>
> Any attorney who feels he may be of assistance in this matter is invited to contact R. F. Allston, (704) 743-2504; P.O. Box 174, Cashiers, North Carolina 28717.

The Bar refused to run the advertisement stating in part that "Your advertisement in effect asks South Carolina lawyers to solicit you for their services which I believe would be a violation of the Code of Professional Responsibility" — reply of January 13, 1978.

In November 1978, petitioner filed an action, pro se, Robert F. Allston v. J. D. Todd, Jr., et al., in the United States District Court for the District of South Carolina, Columbia Division, against certain Bar officers and each of the Supreme Court Justices, alleging that the Transcript was a First Amendment forum by virtue of the fact that the South Carolina Bar was an agency of the State of South Carolina and that the refusal to publish was state action and a prior restraint upon petitioner's First Amendment rights. Petitioner sought preliminary injunctive relief to have the advertisement printed which was denied by the District Court by Order of February 27, 1979.

On December 27, 1978, petitioner moved the South Carolina Supreme Court:

> NOW COMES the Defendant-Appellant, Robert F. Allston, requesting that this honorable Court or the Justices thereof, pursuant to the Code of Laws of South Carolina, 1976, Sections 14-3-50 and 14-3-60, certify to the Governor of the State of South Carolina that Justices J. Woodrow Lewis, Bruce Littlejohn, J. B. Ness, William L. Rhodes, Jr., and George T. Gregory, Jr., are disqualified to preside in this cause. This Motion is made on the following grounds:
>
> 1. This Motion is made on the grounds that the above named Justices are named defendants in United States District Court for the District of South Carolina, Columbia Division, civil action 78-1993, in which Federal action the Defendant-Appellant, Robert F. Allston is the Plaintiff. The Appellant Allston respectfully submits that it would be an untenable situation under well accepted principles of law and equity for the members of a forum who are named Defendants in one action, in this case Robert F. Allston's Federal action, to also act to adjudicate the affairs of the same person who has joined the members of the same forum as defendants.
>
> 2. This Motion is made on the further grounds that the above named Justices are in a position of authority and control over the South Carolina Bar and its members and the South Carolina Bar and certain of its members are named Defendants in the above referenced civil action 78-1993. The above named Justices promilgate rules of ethics

and rules of practice for the practice of law in the State of South Carolina for members of the South Carolina Bar and which rules are made mandatory for the practice of law upon members of the South Carolina Bar. The Justices of the South Carolina Supreme Court are responsible for enforcing such rules and regulations. South Carolina Supreme Court rule 32 has been brought directly into controversy in the above referenced civil action 78-1993 seeking temporary and permanent injunctive relief. Therefore, the above named Justices are not disinterested persons but have a substantial interest in the outcome of civil action 78-1993 and are thereby disqualified to preside in this cause.

3. Finally, the due process clauses of the South Carolina State Constitution and the United States Constitution would prohibit any of the Justices of the South Carolina Supreme Court from adjudicating the Appellant Allston's appeal in this cause where they have been named as Defendants in the Appellant Allston's Federal civil action 78-1993 or where they have an interest in the outcome of that litigation of a substantial nature.

WHEREFORE, the Appellant, Robert F. Allston, respectfully requests this Court, or the Justices thereof, to certify to the Governor of the State of South Carolina that the Justices of this Court, J. Woodrow Lewis, Bruce Littlejohn, J. B. Ness, William L. Rhodes, Jr., and George T. Gregory, Jr., are disqualified to preside in this cause.

Section 14-3-50, 14-3-60, of the 1976 Code of Laws of South Carolina State as follows:

§ 14-3-50. Disqualification of justice by reason of interest or prior participation in case.

In addition to the cases mentioned in § 14-1-130, no justice shall preside in any case or at the hearing thereof in which he may be interested or in which he may have been counsel or has presided in any inferior court.

§ 14-3-60. Procedure when justice cannot preside in cause; special justices.

In case all or any of the justices of the Supreme Court shall be disqualified or be other wise prevented from presiding in any cause, the court, or the justices thereof, shall certify the same to the Governor of the State, and he shall immediately commission specially the requisite number of men learned in the law for the trial and determination thereof.

The South Carolina Supreme Court issued the following order of January 25, 1979, in Augustus T. Graydon's fee case against the petitioner:

The Court has considered Motions that Members of the Court be disqualified in passing on the appeal in the above case, that petitioner be allowed the use of the Supreme Court Library in connection with his appeal, and that appellant be allowed to perfect an appeal from the Order settling the record.

> Justice Rhodes is disqualified in this matter because of prior contact with this litigation, but the Motion to disqualify other Members of the Court is denied.
>
> Petitioner has the right to use the Supreme Court Library as other litigants and no further permission is needed.
>
> Admittedly, peitioner failed to timely file Notice of Appeal from the Order settling the record and his request to now perfect such appeal is denied.

The justices of the South Carolina Supreme Court were dismissed from the petitioner's action to secure his right to advertise in the Transcript by order of the District Court of February 27, 1979, the hearing on the matter having been held on January 31, 1979.

Thus peitioner's rights under the due process provision of the Fourteenth Amendment of the United States Constitution were timely raised before the South Carolina Supreme Court and denied.

Regarding the counterclaim of Augustus T. Graydon in the District Court, the District Court Order gave him the option of proceeding with the fee claim in either the District Court or the State Court. This election was made by letter of June 19, 1979, from Wilburn Brewer, Jr., Esquire, counsel for Augustus T. Graydon, to the Clerk of the District Court wherein he elected to proceed in that Court.

Thus there can be no further proceedings of the fee issue or attachment in any South Carolina State Court. The

Order upholding attachment is from the State Supreme Court, the highest state court. A proceeding for attachment is collateral to the parent action. Under these circumstances, the United States Supreme Court has jurisdiction of the Fourteenth Amendment due process issue regarding the petitioner's motion to the justices to disqualify under 28 U.S.C. 1257(3).

When filing his action against the Bar and Supreme Court Justices on November 24, 1978, petitioner filed a Motion for Preliminary Injunction, Memorandum and Affidavit in support of injunction. The affidavit was to appraise the defendants and the Court of the litigation, issues, and facts, for which the petitioner required the advice and representation of counsel. Each Supreme Court Justice was served with a copy of the affidavit. Thus each justice was appraised of the claim of petitioner's adversary before the Supreme Court, the attorney Graydon, that he and other prominent attorneys could expect favored treatment from justices and judges as set forth in paragraph 30 of the affidavit:

30. By letter of November 22, 1971, attached hereto as Exhibit 12, Augustus T. Graydon, Esquire, of Columbia, South Carolina, counselled me as follows:

> Most important, we must remember that the referee, the circuit judge and the five justices of the Supreme Court are human beings . . . with all the frailties, prejudices and weaknesses of other men. I know them all well, and while you as a layman may believe that judges decide case on the basis of established principles of law and precidents established over the ages, I have observed that more and more the judges decide cases on the basis of their personal concept of justice and what ought to be done.

Continuing, Graydon stated that the contemporary courts rely less on outmoded common law concepts but increasingly upon what he described as "substantial justice or simple pragmatism." The reference to "Bam" in the following paragraphs quoted from the same letter, is to B. A. Moore, Esquire, of Charleston, South Carolina, a prominent attorney and my adversary in both the matter of the Estate of Susan Allston, filed in 1971, in the Court of Common Pleas for Georgetown County, and Civil Action Number 75-890 filed in 1975 in the United States District Court for the District of South Carolina, Columbia Division:

> Should such a view prevail in your case, it could be that Bam would prevail on the basis of his being a respected member of the Bar, a well-known Charlestonian and a friend of several of the judges. I am also a respected member of the Bar, a well-known Columbian and a friend of several of the judges. But Bam is the litigant.
>
> You may think that I am cynical and disillusioned about the way in which our courts operate; I am practical and realistic. Almost any case can be decided either way, and a skillful jurist can put up respectable and persuasive reasons for almost any decision.
>
> Whether I like it or not, the referee and the circuit judge will probably learn about the settlement offer in this case, and that might influence them in their decision.

Augustus T. Graydon who has himself served as a judge, is my adversary in an action against me for attorney fees in the Court of Common Pleas for Georgetown County, South

Carolina, and in the above mentioned Federal Civil Action Number 75-890 in which he is a defendant. American Jurisprudence, second edition, Attorney and Client, paragraph 219, states:

> A lawyer who does not at all times represent his client with undivided fidelity is not entitled to compensation for his services, even though his conduct was not intentionally prejudicial to his clients interest. An attorney who is guilty of actual fraud or bad faith toward his client, or who seeks to secure his personal advantage to the prejudice of his client, is not entitled to any compensation for his services.

I need the expertise of a competent South Carolina attorney to determine the truth of Graydon's counsel to me under the law as set forth above and other applicable laws.

Each of the Justices of the South Carolina Supreme Court were appraised of the past relationship between the attorney Graydon and one of their members, Justice Rhodes as set forth in paragraphs 35 through 40 of the petitioner's affidavit filed in the action Robert F. Allston v. J. D. Todd, Jr., et al., November 24, 1978:

35. I need the expertise of competent South Carolina counsel to examine and take appropriate action in my interest regarding the professional relationship between Augustus T. Graydon, Esquire, of Columbia, South Carolina, Edward K. Pritchard, Jr., of Charleston, South Carolina, and South Carolina Supreme Court Justice, William Rhodes, Jr. At the time the following events requiring analysis took place, William Rhodes, Jr., was a South Carolina circuit judge.

36. By letter of September 19, 1972, attached hereto as Exhibit 16, A. T. Graydon claimed to be representing me when in fact he had been unequivocably dismissed in May of that year. Ten days later, on September 29, 1972, Graydon, who was at the time in an adversary position to my position, advised me in the letter attached hereto as Exhibit 17:

> I talked with Judge Rhodes by telephone and explained to him by position and the status of the matter as I knew it.

Thus Graydon discussed his position with Judge Rhodes without either me, or counsel representing me, present, and outside of a proper or scheduled court proceeding.

37. It was my understanding at this time that I was being represented by Edward K. Pritchard, Jr., Esquire, of Charleston, South Carolina. The following letter of November 8, 1972, attached hereto as Exhibit 18, from Pritchard to Graydon, was unknown to me until ten months later:

> As I advised you on the telephone, my father and I both strongly urge Bob Allston to accept the proposal of a flat $7,500 as set forth in your letter of October 11. However, as of this writing, he has shown no propensity to accept our decision.
>
> If Bob Allston wants me to attend the hearing with him on November 14, I will be happy to do so, but I advised him that I did not intend to represent him in any dispute with you over the fee. However, I do think he might be able to be of some help on November 14 if Judge Rhodes and I together can convince Bob Allston that he should go along with your offer of a compromise as to the fee.

> As I understand it, you do plan to go through with the hearing as scheduled on the fourteenth and that the only item of contention left is the matter of your fee.

By letter of November 13, 1972, attached hereto as Exhibit 19, five days after the date of the foregoing letter, Graydon wrote to Judge Rhodes stating as follows:

> The only remaining issue is the question of my fee, and, as set out in my return, that matter is governed by an agreement between myself and Mr. Robert Allston which is contained in letters between Mr. Allston and me.

38. Sixteen days later, on November 29, 1972, Judge Rhodes wrote to Graydon, attached hereto as Exhibit 20, stating the following:

> . . .I will schedule a hearing on the remaining issue of attorney's fees and dispose of them in a separate order. . . .Since it appears that you and Mr. Pritchard are the only ones concerned with the issue of attorney's fees, I would assume it would be equally convenient to both of you, the distance being about the same, to hear the matter in Hampton other than in Georgetown. Accordingly, I am setting this matter for hearing here in Hampton on December 18th at 11:00 a.m.

At this time no Summons or Complaint had been served upon me or filed and no Summons or Complaint was actually served upon me or filed until three years later in 1975.

39. Attached Exhibits 18, 19, and 20 state that three persons besides me were to attend the planned hearing, Pritchard, Graydon, and Judge Rhodes. The only item planned to be discussed at the hearing, which was originally scheduled for a hearing on the estate of Susan Allston, was the issue of Graydon's attorney fees. Although Pritchard had been engaged to represent me, Pritchard and Judge Rhodes together were to convince me to accept Graydon's demand of $7,500 for attorney fees and Judge Rhodes was prepared to issue a separate order in the matter. Graydon's letter to Judge Rhodes alleges that the fee issue was governed by an agreement between Graydon and me. However, there was nothing whatsoever in the Complaint for declaratory judgment concerning the Estate of Susan Allston, regarding a matter of fees based on contract between myself and Augustus T. Graydon. The Complaint did not address attorney fees in any way. Neither the original nor copies of either of the letters from Graydon to Judge Rhodes or from Judge Rhodes to Graydon were placed in the Susan Allston estate declaratory judgment circuit court file in Georgetown. All during the time that Graydon was seeking attorney fees through these methods, I had an offer outstanding to arbitrate the issue with him wherein I had suggested Professor Coleman Karesh of the University of South Carolina School of Law and Franklin Burroughs, Esquire, as arbitrators. This offer was made by letter of May 8, 1972, and not withdrawn until early the next year. Graydon refused to consider the arbitration.

40. I need the expertise of competent South Carolina counsel to examine the foregoing matters with regard to questions of legal or judicial ethics, due process of law and equal justice under law, and any question of abuse of state power. Sections of South Carolina Supreme Court Rule 32, The Code of Professional Responsibility, that require

review as they may relate to the above matters, include: EC 1-1, EC 1-4, EC 2-23, EC 7-1, EC 7-35, DR-7-106, DR 7-110, EC 8-5, EC 9-4, Dr 9-101, and Rule 33, the Code of Judicial Conduct, Canons 1, 2, and 3.

Each of the South Carolina Supreme Court Justices were appraised of the difficulties encountered by the petitioner in attempting to obtain a transcript of a hearing wherein the above described relationship between the attorney Graydon and Supreme Court Justice Rhodes was discussed, as set forth in affidavit paragraphs 56 through 59:

56. The next court proceeding that I attended in the State Courts of South Carolina, was with regard to the action styled Augustus T. Graydon v. Robert F. Allston et al. regarding my motion to dismiss a provisional remedy withholding $9,000 in my funds withheld pursuant to a document entitled a restraining order, dated on its face, December, 1972. The hearing was held before Circuit Court Judge George F. Coleman at the County Courthouse in Georgetown, South Carolina.

57. Among the matters presented to the Court in support of my motion to dismiss, were the substance of the issues presented in defenses seven through eleven of my verified Answer in that cause. A copy of this portion of my Answer is attached hereto as Exhibit 30. In part, these defenses discuss the plan entered in to by my attorney at the time — E. K. Pritchard, Jr., Augustus T. Graydon, and Judge William Rhodes, Jr., wherein a hearing scheduled for the matter of the estate of Susan Allston would be converted to a hearing regarding the matter of attorney fees for Augustus T. Graydon wherein my attorney, Augustus T. Graydon and Judge Rhodes would all three act in concert to attempt to convince me to give in the neighborhood of $7,500 to $9,000 in alleged attorney fees to Augustus T.

Graydon, the plan being unknown to me at the time. The source of the information stated in this paragraph is attached Exhibits 18, 19, 20 and 38.

58. After filing notice of appeal from the Order of Judge George F. Coleman allowing attachment to issue, I was unable to contact the court reporter whether by telephone or by mail through the address supplied to me by the Clerk of Court for Georgetown County in order to obtain a transcript of the proceeding of August 9, 1977. This necessitated an application for an extension of time to obtain the transcript. Secondly, I actually served and filed a proposed contingent "case and exceptions" during this period without having the transcript, at the demand of counsel for my adversary. This matter is set forth in the copy of the last two pages of an Affidavit filed in the Georgetown County Clerk's Office with regard to the matter, attached hereto as Exhibit 31. In my attempts to obtain the transcript, in all, it was necessary for me to obtain one extension of time from the Circuit Court and two extensions of time from the South Carolina Supreme Court.

59. When I did reach the Court Reporter, Francis Evans, she advised me by letter that a deposit of Seventy-five Dollars ($75) would be required, a copy of which letter is attached hereto as Exhibit 32. However, a few days before the transcript was to be delivered, she wrote to me by letter attached hereto as Exhibit 33, advising me that both she and Judge Coleman now remembered that my moving papers had been filed prior to the hearing and that therefore the hearing of August 9, 1977, had not been recorded in the first instance. In a subsequent telephone conversation with Judge Coleman, he did not corroborate the Court Reporter's view but suggested that there had been a failure in the Court's Reporter's equipment. Judge Coleman again indicated no knowledge of the Court

Reporter's view when I asked him about it during the subsequent hearing to settle the record on appeal. The loss of this transcript was responsible for a substantial portion of the three to four hours required for the subsequent hearing to settle the record on appeal in the matter. I require counsel that can be effective in obtaining required transcripts.

Each of the South Carolina Supreme Court Justices was appraised of the following advice to sue by my North Carolina Counsel, as set forth in affidavit paragraph 10:

10. Thomas F. Loflin, III, Esquire, my counsel in Durham, North Carolina, has advised me that he is not proficient regarding South Carolina Law and that I require the services of a member of the South Carolina Bar or an attorney otherwise proficient in South Carolina law to advise me regarding South Carolina law and to take the appropriate legal steps to protect my interests.

Each of the South Carolina Supreme Court Justices was appraised of one of the petitioner's attempts to obtain South Carolina counsel as set forth in petitioner's affidavit, paragraph 45, filed Nov. 24, 1979, in petitioner's action to secure his First Amendment right to advertise for counsel in the South Carolina Bar Transcript:

45. In a form letter of October 15, 1975, I sought counsel from senior attorneys in twenty-two of the largest law firms in Columbia, South Carolina. Attached to each letter was a copy of my Complaint filed in the Columbia, South Carolina Federal Court. No evidentiary material was enclosed. The letter stated that I was soliciting representation with the support of United States District Court Judge Robert Hemphill. However, not a single law firm requested me to furnish them with any matters of evidence

in support of the allegations of the Complaint so that the merits of the case might be investigated. I received seven replies, all declining employment. Attached hereto, with my letter soliciting counsel, as Exhibit 28, are the replies of Harold Siegler, Esquire, and R. B. Herbert Jr., Esquire. The only replies that constituted anything more than a brief statement, declining employment, were from Herald Seigler, Esquire and R. B. Herbert, Jr., Esquire. My Complaint, received by these gentlemen, alleged various unethical practices regarding Augustus T. Graydon. Harold Seigler took the opportunity to attempt to refute these allegations and advised me that he fully supported Graydon's methods in the pratice of law:

> I have known Mr. Augustus T. Graydon very pleasantly for a period of more than thirty-five years. He is an attorney of considerable ability. I personally know him to be conscientious and vigorous in the promotion and the protection of the interest of his clients. He is a person of absolute integrity. As an attorney, he enjoys an impeccable reputation.
>
> Please consider the above as my response to your invitation to be associated in the handling of the above identified litigation.

The petitioner's affidavit filed in the action Allston v. Todd, et al., on November 24, 1979, is 29 pages in length supported by 38 exhibits and it sets forth many other substantial issues portraying the weakness in fundermental support for due process and related law and the difficulty encountered in asserting such federal rights as the right to an unbias Court in the state system.

REASONS FOR GRANTING WRIT

1. THE DECISION BELOW CONFLICTS DIRECTLY WITH DECISIONS OF THIS COURT REGARDING THE REFUSAL OF THE SOUTH CAROLINA SUPREME COURT JUSTICES TO DISQUALIFY.

In Johnson v. Mississippi 403 U.S. 212, this Court stated that trial before an unbiased judge was essential to due process. In that matter, a judge of the Circuit Court in Mississippi had been sued by the petitioner in a civil rights action and had been a losing party. The law regarding the right of a litigant to an unbiased court and a judge that is beyond the suspicion of bias is well settled under the due process provision of the Fourteenth Amendment. See also Mayberry v. Pennsylvania 400 U.S. 455.

The petitioner's affidavit filed in the action Robert F. Allston v. J. D. Todd, Jr., et al., November 24, 1978, has not been controverted by any affidavits or discovery material submitted by the defendants, including the Supreme Court Justices. No discovery was taken in the action. The petitioner has not been requested to serve as a witness in any disciplinary proceedings relating to matters set forth in the affidavit nor is he aware otherwise of any such proceeding or ruling.

Thus, as set forth in the statement of the case herein, each of the Supreme Court Justices, having been served a copy of the affidavit, was fully aware that My Graydon, the petitioner's adversary before them and an officer of their Court, claimed he knew the justices all well, that he expected favored treatment from them and that such treatment would be covered up in the Court decision. As a clear example of Mr. Graydon's influence, the Justices knew

that one of their own members, who did recuse, had previously been involved with Mr. Graydon in a matter more than suggesting an attempt at extortion and fraud. All of these matters were well supported in the affidavit by exhibited letters.

The Justices were fully aware that petitioner's North Carolina counsel had advised the petitioner that he required a South Carolina attorney to handle South Carolina affairs and that the petitioner had encountered substantial difficulty in attempting to obtain South Carolina counsel.

Indeed due to the circumstances disgussed in the statement of the case, the Petitioner very correctly recognizes he must be extremely cautious about entering into an attorney client relationship even where the Petitioner able to locate Counsel. From the standpoint of an Attorney, he must feel that he will be supported by the Bar and Supreme Court in all of the measures he must take for his client where the litigation concerns in some way the interest of the Bar, its members, or the Supreme Court. Without such support, a consecience attorney is subjected to manifest unresolvable conflicts. The result is to foster distrust of the legal system in the public.

The lack of support for constitutional guarantees of due process and related issues by state authorities is at the heart of this serious problem. Therefore the grant of Petitioners Writ and examination of the specific issue of disqualification of the Justices with its varied and serious attendant circumstances may not only reverse clearly constitutionally antagonistic case law but improve the ability of members of the public to find Justice where the interest of the Bar or the bench are involved or their members.

2. THERE IS A DIRECT CONFLICT BETWEEN THE DECISION OF THE SOUTH CAROLINA SUPREME COURT AND THE SUPREME COURT OF ANOTHER STATE REGARDING THE RIGHT OF A LITIGANT TO AN UNBIASED COURT.

In Payne v. Lee, 222 Minn 269, 24 NW 2d 259, the Minnesota Supreme Court held that a probate judge was disqualified where for one reason or another a condition had arisen that would make it impossible for the judge to assume in fact and appearance a role of unquestioned impartiality in determining the matters in dispute. The Court stated that the principal of impartiality, disinteredness and fairness on the part of the judge is as old as the history of courts citing both the Minnesota Constitution and the Fourteenth Amendment to the United States Constitution.

The question of bias arises often regarding a financial interest of a Judge in the outcome of litigation before him and such bias has been repeatedly struck down under the due process provision of the Fourteenth Amendment see Wagers — vs — Sizemore 222 Ky. 306, 300 SW 918 (1927) and R. E. Tullius 73 Ohio L. ABS. 233, 137 NE 2 d 312 (1955).

Compared to these cases the Petitioners case deserves the attention of this Court in that it is a ruling by the highest State Court about itself clearly antagonistic to the Fourteenth Amendment, carrying substantial case law implication.

3. THE PETITIONER HAS REQUESTED THE PROPER STATE PROCEDURE IN SOUTH CAROLINA CODE OF LAWS, 1976, 14-3-50 AND 14-3-60 THROUGH WHICH TO IMPLEMENT HIS REQUEST THAT THE S.C. JUSTICES DISQUALIFY.

In that these are the specified and appropriate South Carolina procedures any suggestion that another procedure should have been stated by the petitioner would fail in any event for "Novelty in procedural requirements cannot be permitted to thwart review in this court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights" NAACP v Alabama 357 U.S. 449, 455-458 see also Barr v. City of Columbia, 378 U.S. 146, 149 and Davis V. Wechsler, 263 U.S. 22, 24.

The Petitioner has not argued herein the merits of question presented 2 and 3. With respect to question 2, he is unaware that an appeal of the settlement of the record on appeal has been denied in the past due to lack of notice to opposing council within a specified time. These matters are respectfully reserved for argument should writ be granted.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the memorandum opinion below and review whether the South Carolina Supreme Court Justices could properly adjudicate the petitioner's cause.

Respectfully submitted,
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APPENDIX

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Augustus T. Graydon ..... Respondent

versus

Robert F. Allston and C. C. Grimes,
Jr., as Executor of the Estate of
Susan L. Allston, of whom Robert F.
Allston is ..... Appellant

Appeal From Georgetown County
George Coleman, Judge

Memorandum Opinion No. 79-90
Filed May 3, 1979

APPEAL DISMISSED

Robert F. Allston, of Cashiers, North Carolina, Pro Se.

Wilburn Brewer, Jr., of Nexsen, Pruet, Jacobs & Pollard of Columbia, for respondent.

PER CURIAM: This matter is on appeal from the order of the Honorable George Coleman, Presiding Circuit Judge. We have reviewed the record and find that Judge Coleman's order correctly disposes of all of the issues. We are of the unanimous view that a full written opinion would have no precedential value, and that no error of law appears. The appeal is therefore dismissed under our Rule 23.

s/ J. Woodrow Lewis C.J.
s/ Bruce Littlejohn A.J.
s/ J. B. Ness A.J.
s/ George T. Gregory, Jr. A.J.

RHODES, A.J., disqualified

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

AUGUSTUS T. GRAYDON,
Plaintiff,

versus

ROBERT F. ALLSTON AND C.C. GRIMES, JR.,
AS EXECUTOR OF THE ESTATE OF
SUSAN L. ALLSTON, DECEASED,
Defendants.

IN THE CIRCUIT COURT

75-CP-22-297

ORDER

This matter came before the Court on Motion of the defendant Allston seeking to vacate an order of Honorable William L. Rhodes, Jr., dated December 28, 1972 wherein the Executor of Susan L. Allston was restrained from disbursing funds in the amount of $9,000.00, which amount is claimed by the plaintiff herein as a fee for legal services. The Order of Judge Rhodes was modified by an Order of Honorable Wade S. Weatherford, Jr. dated September 29, 1976 which allowed the Executor to pay said funds over to the Clerk of Court. The defendant Allston seeks the return of the funds to him claiming that the attachment statute was not properly complied with.

The plaintiff took the position that the funds were not subject to formal attachment while in the hands of the Executor, but that Judge Rhodes had the authority in equity to issue the order of December 28, 1972 and such order was valid until vacated or overturned. The Court finds the posi-

tion of the plaintiff on this issue to be correct. *Maxwell v. Green* 171 S.C. 253, 172 S.E. 146 (1973); *Kinloch v. Meyer,* 17 S.C. Eq. (1 Spears) 427 (1884); *Farrar v. Haselden,* 30 S.C. Eq. (9 Rich) 331 (1857); *Penning v. Reid,* 167 S.C. 263, 166 SE 139 (1932); See also, *In Re Warner's Estate,* 35 So. 2d 296 (Fla. 1948).

The Executor has been discharged and the question now is whether Judge Rhode's order should be dissolved, and if so, should the Court allow attachment of the funds by plaintiff pending the outcome of this litigation. Plaintiff has filed an Affidavit for Warrant of Attachment and a Bond for Attachment. The Affidavit for the Warrant of Attachment and Bond for Attachment were filed after a hearing on the motion in Georgetown on August 9, 1977. By letter dated October 3, 1977, the Court advised defendant that it proposed to consider the entire record and invited defendant to file a brief as a result of these filings. The letter stated:

> In any event, since these proceedings are now a part of the record I propose to consider the entire record and the issues made by you and Mr. Brewer. I therefore extend to you the right and opportunity to file with me a Brief, if you desire, in connection with the filing by Mr. Brewer of the Affidavit for Attachment, Attachment Bond and Warrant of Attachment. If you wish to file a Brief with me on any questions or issues which you consider appropriate because of these filings please do so within fifteen (15) days from the date of this letter.

Subsequently, the defendant did file a Supplemental Brief. The Court then contacted counsel for plaintiff and the defendant to set a hearing to allow additional arguments if desired by defendant in view of his contention

that the Court should not consider the filing of the Affidavit of Warrant of Attachment and Bond for Attachment. Defendant declined a further hearing and advised the Court that he would rely upon his Briefs. Having given the defendant every opportunity to be heard, the Court finds that the matter is ready for decision.

Based upon the record the Court at this time, the Court is of the opinion that the attachment should issue. Inasmuch as the funds are in the hands of the Clerk of Court for Georgetown County, it would be superfluous to issue a warrant addressed to the Sheriff. It is therefore ordered that the funds in the hand of the Clerk of Court are hereby attached to be held by the Clerk until further order of the Court.

It further is ordered that the Clerk of Court shall place the funds in an interest bearing savings account in a banking or savings institution insured by the Federal Deposit Insurance Corporation. The accumulated interest shall be paid out according to the outcome of this litigation.

It is further ordered that the attachment herein may be dissolved and the funds paid over to the defendant Allston upon his filing with the Clerk of Court for Georgetown County a surety bond in compliance with the provisions of Section 15-19-310, S. C. Code of Laws, 1976.

So Ordered.

December 21, 1977.

George F. Coleman
Judge, Circuit Court for
Georgetown County